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FISCAL IMPACT STATEMENT

LS 7879

BILL NUMBER: SB 440

NOTE PREPARED: Apr 14, 2003

BILL AMENDED: Apr 9, 2003

SUBJECT: Air Pollution Control Board Rules.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Bottorff

BILL STATUS: As Passed - House

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill defines "emission data" for purposes of environmental management laws. The bill prohibits the Air Pollution Control Board (Board) from adopting rules to require motor vehicle emissions testing in Clark and Floyd Counties after December 31, 2006. It allows the Budget Agency to approve testing if necessary to avoid a loss of federal highway funding. This bill also prohibits the Board from establishing fees to be paid for testing.

The bill also adopts the National Flood Insurance Program regulations as the criteria for determining whether a person is allowed to construct a new residence in a floodway along the Ohio River. It specifies the lowest floor of a new residence constructed in a floodway must be at least two feet above the 100 year frequency flood elevation.

The bill requires the Board to adopt by November 1, 2004, new rules to address the matters contained in certain federal requirements concerning sources of air pollution and requires the Department of Environmental Management (IDEM) to report the status of the rulemaking to the Environmental Quality Service Council.

The bill requires the maintenance and protection of outstanding state resource waters and exceptional use waters and requires the Water Pollution Control Board to adopt certain rules concerning outstanding state resource waters and exceptional use waters.

The bill limits sale and distribution of plastic bags that are not degradable. It suspends for five years the authority of IDEM to adopt a new rule or policy that requires certain industries to comply with standards of conduct that exceed federal standards. It also extends the period during which a state agency or board may

not enforce certain wetlands rules. The bill prohibits a solid waste management district from regulating conduct that is regulated by a state agency, except as expressly granted by statute.

Effective Date: (Amended) December 31, 2000 (retroactive); December 31, 2002 (retroactive); January 1, 2003 (retroactive); Upon Passage; July 1, 2003.

Explanation of State Expenditures: (Revised)

Elimination of the Auto Emission Testing Program in Clark and Floyd Counties. Eliminating the program in these two counties after December 31, 2006, would reduce state expenditures by about \$980,000 per year.

However, the elimination of the program could result in indirect expenses to the state in that the state may have to expend more on other air pollution control measures to avoid failure to comply with federal clean air standards. The bill allows the Budget Agency to approve testing if necessary to avoid a loss of federal highway funding. This bill also prohibits the Board from establishing fees to be paid for testing.

Background Information. The federal Clean Air Act mandated that Indiana implement measures, such as the vehicle emission testing program, to control ozone in Lake, Porter, Clark, and Floyd Counties. The program intends to help reduce emissions of mobile sources of volatile organic compounds, nitrogen oxides, and carbon monoxide, which form ozone.

Indiana began its auto emission testing program in 1984. IVTC operated the program which consisted basically of a tail pipe test. However, the federal Clean Air Act Amendments of 1990 required more effective and accurate testing for Lake and Porter Counties. The new testing required the construction of testing stations and new equipment that would test cars on a dynamometer, a device that operates something like a treadmill and simulates actual driving conditions in a way that the tail pipe test cannot. Because of the new requirements, the contract was put out for bid. IVTC did not bid on the project. The predecessor of Envirotest, called Systems Control, bid on the entire project. One other company bid on a small portion of the project.

New stations were built and new equipment was purchased by the new operators. The program is currently operated by Environmental Systems Products, Inc., which is headquartered in East Granby, CT. This company has an Indiana subsidiary called Envirotest Systems. IDEM currently has a ten-year contract with Envirotest to conduct the tests. The contract expires in December 31, 2006. There is no fee assessed vehicle owners for the test.

Nine testing sites exist: seven in the northern part of the state; one in Clark County; and one in Floyd County. Cars are tested once every two years. The four newest model years are exempt from testing. The two sites in the southern part of the state test over 50,000 vehicles per year. Sites in the northern part of the state test over 150,000 vehicles per year. During the two-year period from 2001-2002, Envirotest conducted initial tests of 419,599 vehicles. The cost of the program was \$15,931,203 for the biennium. (Given these figures, the cost per vehicle per initial test equaled \$37.97, or \$38. Applying this figure, a fee of \$38 would be needed every two years to cover expenses.)

The Auto Emission Testing Program expended \$6.9 M in FY 2002. Of this total \$257,192 was for personal services and over \$6.6 M was for grants, distributions and subsidies. The vast bulk was for the Envirotest contract. IDEM also has a contract with an entity who provides expert mechanic advice. The program received \$1.5 M in federal funding in FY 2001 and \$300,000 in FY 2002, the last federal funding that was

available for start up activities at the test sites. Federal funding is not expected for this program for the upcoming biennium because it is no longer eligible. IDEM has requested \$7.9 M per year for the Auto Emissions Program for the 2003-2005 biennium.

Four IDEM staff members are funded with the program budget at a requested \$171,990 per year, or about \$43,000 per employee per year, for the 2003-2005 biennium. The employees oversee operations, with regular visits to the test sites, respond to motorist inquiries, manage the mechanic certification program (which includes putting on training programs and reviewing requests for certification and re-certification). They also work with the contractor on technical and management issues.

Definition of "Emission Testing". This provision will have no fiscal impact.

Water Body Designations. This rulemaking is already underway, so staff resources are already allocated for the project. This provision will not create a new fiscal impact on IDEM staff resources.

Construction in Floodways. The Department of Natural Resources should be able to administer any increased permitting load with existing staff and resources. The Division of Water administers permitting in floodways under the Flood Control Act. This bill may increase the number of permits for construction in the Ohio River floodway that the Division reviews, as current law does not permit new construction in a floodway. Since 1997 the Division has received approximately 22 applications to build in the floodway of the Ohio River.

The bill allows new home construction in the floodway of a boundary water under certain conditions. The first floor of the new residence must be at least two feet above the 100-year frequency flood elevation. This may increase the number of permits reviewed by the Division. Total number of additional permits and any additional cost to the Department is unknown. (Department staff were contacted but have not provided a response at this writing. Information will be updated when available.) Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Background: The section of code being amended by this legislation was implemented in 1997 after flooding along the Ohio River. This was added to provide some leeway to homeowners along the Ohio River whose homes were damaged by flooding. This provision allowed homeowners to repair flood damages to their homes, but not replace the home. The federal criteria are less restrictive than the state criteria. The state criteria for streams other than the Ohio River does not permit new homes in the floodway, and there are some limitations on additions to homes in the floodway as well.

During the flood of 1997 the State Emergency Management Agency (SEMA) estimated damages in Indiana at more than \$20 M. These included costs for temporary housing, small business loans, grants, unemployment, and public assistance. Flood insurance claims were \$9 M. These numbers include flooding along all waterways during 1997. However, staff state that a majority was related to flooding along the Ohio River.

Areas affected by flooding, that is declared a disaster area, are eligible for several disaster assistance grants. These include: disaster grants - housing, disaster grants - employment, direct grants to individuals (\$15,000 maximum per household), and direct grants to individuals - emergency repairs. The state/locals are responsible for a 25% match for these grants with the federal government paying the remaining 75%. In 1997 the state/local share was approximately \$4 M.

If an area is out of compliance with federal floodway construction regulations, the area risks losing federal flood insurance. This would also impact a homeowners ability to obtain a mortgage for purchase of a home in the floodway.

The current permit fee for permitting in a floodway is \$50. Division staff state that this fee does not fully offset the cost of issuing a permit. Division staff estimate that the cost of issuing all permits for FY 2001 exceeds the fee by \$866 per permit.

Explanation of State Revenues: (Revised)

Termination of Vehicle Emissions Testing in Clark and Floyd Counties. Discontinuation of the program could result in the imposition of federal sanctions for failure to comply with clean air standards and the withholding of federal highway funds for expansion projects throughout the state. However, the bill allows the Budget Agency to approve testing if necessary to avoid a loss of federal highway funding. The federal government has initiated sanctions in California, Maine, Montana, and Missouri. Montana has lost the ability to spend some federal highway dollars. In Indiana, a highway expansion project from I65 to the Illinois border is currently planned which will use approximately \$220 M in federal highway funding. In total, the state receives over \$700 M in federal highway dollars.

Construction in Floodways. The current permit fee for permitting in a floodway is \$50. Division staff state that this legislation may increase the number of permits reviewed. An estimate of total revenue generated is not available at this time.

Explanation of Local Expenditures: (Revised) See *Explanation of State Expenditures*.

Explanation of Local Revenues:

State Agencies Affected: IDEM; Department of Natural Resources; State Emergency Management Agency.

Local Agencies Affected: Clark and Floyd Counties and potentially all within Ohio River Floodway.

Information Sources: IDEM budget request for the 2003-2005 biennium; IDEM presentation to the Environmental Quality Service Council, September 12, 2002; INDOT testimony to the House Environmental Affairs Committee; Jim Hebenstreit, Assistant Director, Division of Water, Department of Natural Resources, 317-232-4160; Mike Neyer, Division Director, Division of Water, Department of Natural Resources, 317-232-4160; Jan Crider, State Emergency Management Agency, 317-232-3833.

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